

Bill No. 42-09
Concerning: Common Ownership
Communities – Dispute Resolution
Revised: 3-30-10 Draft No. 2
Introduced: November 17, 2009
Enacted: April 6, 2010
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:

- (1) modify the composition of the Commission on Common Ownership Communities;
- (2) subject community associations to certain annual notification requirements;
- (3) make certain types of complaints subject to dispute resolution through administrative hearings by the Commission;
- (4) establish a special panel with authority to lift the automatic stay imposed when a dispute is filed with the Commission; and
- (5) generally revise County law regarding common ownership communities.

By amending

Montgomery County Code
Chapter 10B, Common Ownership Communities
Sections 10B-3, 10B-8, 10B-9, ~~[[and]]~~ 10B-12, and 10B-17

By adding

Chapter 10B, Common Ownership Communities
Sections 10B-7A and 10B-9A.

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 10B-3, 10B-8, 10B-9, ~~and~~ 10B-12, and 10B-17 are amended, and Sections 10B-7A and 10B-9A are added as follows:

10B-3. Commission on Common Ownership Communities.

(a) The County Executive must appoint, subject to confirmation by the Council, a Commission on **Common Ownership Communities**. The Commission consists of 15 voting members.

(1) [Six] Eight members should be selected from unit or lot owners or residents of self-managed and professionally managed condominiums, self-managed and professionally managed cooperative housing corporations, and self-managed and professionally managed homeowners' associations, and may include members or former members of governing boards.

[(2) Three members should be selected from persons involved in housing development and real estate sales.]

[(3)] (2) [Six] Seven members should be selected from persons who are members of professions associated with **common ownership communities** (such as persons involved in housing development and real estate sales and attorneys who represent **community associations**, developers, housing management or tenants) [or investor-owners of units in common ownership communities], including at least one person who is a professional **community association** manager.

* * *

10B-7A. Notification requirements.

The governing body of a community association must, at least annually, distribute information in a form reasonably calculated to notify all **owners** about the

availability of **dispute** resolution, education, and other services to **owners** and residents of **common ownership communities** through the **Office** and the **Commission**. The **governing body** may satisfy this requirement by including with any annual notice or other mailing to all members of the **community association** any written materials developed by the **Office** to describe the **Commission's** services.

10B-8. Defined terms.

In this Article and Article 3, the following terms have the following meanings:

* * *

(2) **Common element** includes:

(A) in a condominium or cooperative, all portions of the **common ownership community** other than the units; or

(B) in a homeowners' association, any real estate in a homeowners' association community that is owned or leased by the association, other than a unit; and

(C) in all **common ownership communities**, any other interest in real estate for the benefit of **owners** which is subject to the declaration.

[(2)] (3) * * *

[(3)] (4) **Dispute** means any disagreement between 2 or more parties that involves:

(A) the authority of a **governing body**, under any law or **association document**, to:

(i) require any person to take any action, or not to take any action, involving a **unit** or **common element**;

(ii) require any person to pay a fee, fine, or assessment;

(iii) spend association funds; or

(iv) alter or add to a **common** [area or] **element**; or

(B) the failure of a **governing body**, when required by law or an **association document**, to:

- (i) properly conduct an election;
- (ii) give adequate notice of a meeting or other action;
- (iii) properly conduct a meeting;
- (iv) properly adopt a budget or rules;
- (v) maintain or audit books and records; [or]
- (vi) allow inspection of books and records[.];
- (vii) maintain or repair a **common element** if the failure results in significant personal injury or property damage; or
- (viii) exercise its judgment in good faith concerning the enforcement of the **association documents** against [[require]] any person [[who]] that is subject to [[**association documents** to comply with]] those documents.

[(4)] (5) **Dispute** does not include any disagreement that only involves:

- (A) title to any **unit** or any **common** [area or] **element**;
- (B) the percentage interest or vote allocable to a unit;
- (C) the interpretation or enforcement of any warranty;
- (D) the collection of an assessment validly levied against a party; or
- (E) the exercise of a **governing body's** judgment or discretion [of a **governing body**] in taking or deciding not to take any legally authorized action.

[(5)] (6) * * *

[(6)] (7) * * *

[(7)] (8) * * *

(9) **Unit or lot** includes:

(A) any physical portion of a **common ownership community** with distinct property boundaries that:

(i) provides complete, independent living facilities for one or more individuals,

(ii) contains permanent provisions for living, sleeping, eating, cooking, and sanitation, and

(iii) is designated for exclusive ownership, control, or occupancy by those individuals; and

(B) all legally enforceable rights and interests incidental to individual ownership of real property in a **common ownership community**.

10B-9. Filing [[of]] disputes; exhaustion of association remedies.

* * *

(e) [When] Except as provided in Section 10B-9A, when a **dispute** is filed with the **Commission**, a **community association** must not take any action to enforce or implement the association's decision, [except] other than filing a civil action under subsection (f), until the process under this Article is completed.

* * *

10B-9A. Request for relief from stay.

(a) At any time after a **dispute** is filed under Section 10B-9, a **community association** may submit a request to lift the automatic stay required under Section 10B-9(e) to a hearing panel appointed under Section 10B-12, or if no hearing panel has been appointed, a special standing panel authorized to consider requests for relief from stays.

(b) The special panel must consist of 3 voting members of the **Commission** designated by the chair, and must include at least one representative of each membership category.

(c) An association that requests relief from a stay must serve a copy of its request on any other **party** named in the **dispute** by certified mail or personal service. A certificate of service must accompany any request submitted under this Section. A **party** served with a copy of the request must file its opposition, if any, within ~~[[5]]~~ 10 days after receiving service.

(d) If a request ~~[[assigned to a special panel]]~~ for relief from a stay which states facts sufficient to show a need for immediate action is not granted or denied within ~~[[15]]~~ 20 days after the request was filed, the request must be treated as granted.

(e) Except as provided in subsection (d), a request for relief from stay may only be granted if the assigned panel finds that:

(1) enforcing the stay would ~~[[impose]]~~ result in undue ~~[[hardship on]]~~ harm to the **community association**; and

(2) lifting the stay will not result in ~~[[irreparable]]~~ undue harm to the rights or interests of any opposing **party**.

10B-12. **Hearing Panel.**

* * *

(b) The chair must choose 2 members of the panel from the voting members of the **Commission**. [They] The persons selected must represent the 2 different membership groups of the **Commission**. [At least one member must be a resident of a common ownership community.] The 2 **Commission** members must designate the third member from a list of volunteer arbitrators trained or experienced in

common ownership community issues maintained by the Commission. The third member must chair the panel. If a suitable arbitrator is not available, the chair of the Commission must [choose] designate the third panelist from among the voting members of the Commission, and must designate the chair of the panel.

* * *

10B-17. Voting procedures.

* * *

- (d) *Proxy or power of attorney.* Any proxy or power of attorney valid under state law ~~[[is valid]]~~ may be used at any association meeting. However, a proxy and any power of attorney ~~[[that is not appointed to vote as directed]]~~ created for the purpose of a governing body's election must be appointed only to meet a quorum or to vote on matters other than an election for a governing body unless the proxy or power of attorney contains a directed vote on the election. If a proxy or power of attorney form must be approved before it is ~~[[used]]~~ cast, the approving authority must not unreasonably withhold its ~~[[approval]]~~ consent. A general power of attorney valid under state law may be used for any purpose at an association meeting that is consistent with the provisions of the general power of attorney, including for an election of the governing body.

* * *

Sec. 2. Transition. Until otherwise amended or superseded, a regulation issued under Chapter 10B before this Act takes effect remains in effect to the extent that the regulation is consistent with Chapter 10B, as amended by this Act. This Act does not affect the term of any member of the Commission on Common Ownership Communities serving when this Act takes effect.

162 *Approved:*

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Nancy Floreen

4/7/10

Nancy Floreen, President, County Council

Date

165 *Approved:*

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Isiah Leggett, County Executive

Date

168 *This is a correct copy of Council action.*

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Linda M. Lauer, Clerk of the Council

Date